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Supreme Court, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 75-2754

WILLIAM BENSON,

Petitioner,

v.

METRO-GOLDWYN-MAYER INC.

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

WILLIAM H. BENSON,
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LOS ANGELES, CALIFORNIA 90057

Petitioner in
Propria Personna.

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Petitioner, William H. Benson, prays that a writ of certiorari be granted to review the judgement of the United States Court of Appeals for the Ninth Circuit. Entered May 11th, 1976, in this case. And to review a Court Order filed June 7th, 1976, denying a rehearing and augmentation of the record on appeal with his two additional books. And to review the allegation of his not timely renewed copyright. And review the stated: "impossibility of passing lawfully on the issues presented when it is proven herein the missing records on appeal are advantageous to the petitioner's case

and most destructive and incriminating to the respondent's defense."

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is not yet reported and is photocopied in the appendix at P. 1. The Ninth Circuit's Court Order of June 7th, 1976, denying the Motion to Augment The Records on Appeal with Appellant's two books and the petition for a rehearing is attached hereto photocopied in the appendix at P. 7.

JURISDICTION

The judgement of the Court of Appeals for the Ninth Circuit was entered May 11, 1976. Petition for a rehearing and a Motion To Augment The Record On Appeal dated May, 20th, 1976, were denied by a Court Order of the Ninth Circuit on June 7th, 1976. This court's jurisdiction is invoked under 28 U.S.C. S1291.

QUESTION PRESENTED

Whether the United States Supreme Court will permit The Records On Appeal to be augmented with Petitioner's two additional books "The Russian," and a book dramatization of same. The above being the retitle of author's original work "Souls In Bondage." All of those mentioned above contain the Petitioner's dynamic suspense story of "The Escape from Moscow" of the lovers in 1917-1918.

Whether the United States Supreme Court will review the Opinion stating: "Not timely renewed copyright," and honor "United States District Court Ruling" of March 3, 1975, which is contained on P.

6, of Official Court Transcript and rules the petitioner's works are properly copyrighted. And to honor the United States Copyright Office letter dated 10/26/73 as further documented proof the Petitioner has valid Copyright protection. At P. 6 Appendix.

Whether the United States Supreme Court will review the irrelevance of the allegation of "Missing Portions of the Records" on the appeal. Which documents benefit the petitioner and (are most injurious) to the respondent's case. Such as 3 affidavits titled variously "Karla Davidson, Milford I. Rydell and Louis P. Petrich." All three benefit the Petitioner's case. Described herein.

Whether the United States Supreme Court will review the irrelevance of Petitioner's First Amended Complaint as a missing portion. Filed 10/8/74. And review the evidence of dismissing all co-defendants but respondent, Metro-Goldwyn-Mayer, Inc.

Whether the United States Supreme Court will invoke the U.S.C.A. F.R.C.P. 56 (e) & 56(g) 28. Failure of the respondents to have in their possession a valid U.S. Copyright 56e) and in presenting to a Federal Court of the United States, what appears to be false evidence in affidavit statements (two flagitious untruths in their briefs to the United States District Court #1), in their filed 2/7/75, P. & A. in support of summary judgement, P. 4. Which two untruths guided the Court's adjudication. These same two untruths were repeated on P. 14 of respondent's brief to the United States Court of Appeals, dated 11/24/75.

Whether the defendant respondent is guilty of unclean hands in consorting with smugglers and plagiarists. That documented proof herein verified.

STATUTES INVOLVED

**U.S.C. TITLE 17, SECTION 7 - CIRCULAR 14.
U.S.C.A.F.R.C.P. 56(g) 28.**

Rule 56(g) Mandates:

"Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party employing

them the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees. And any offending party may be judged guilty of contempt."

U.S.C. TITLE 17, SECTION 7, CIRCULAR 14

In part:

"It is advisable to include the year date of publication of the old material."

STATEMENT OF THE CASE

Complaint for plagiarism and infringement in the degree or piracy protanto. Petitioner, William H. Benson, claims the respondent's film titled "Dr. Zhivago," infringed his United States Copyrighted story "Souls In Bondage" AA 10095 October 16th, 1940—retitled "The Russian" May 7, 1959 AA 397205.

By this action based upon the United States Copyright Act Title 17 of the United States Code, author petitioner, William H. Benson, claims infringement of his United States Copyright on his story titled "Souls in Bondage" AA 10095, October 16, 1940. Retitled as "The Russian" in May 7th, 1959. AA 397025. At this time (1959,) the author petitioner was issued a new copyright on "The Russian" due to the (copyright office) not having records of his earlier 1940 story aforementioned. Until October 24th, 1973, the United States Copyright Office professed to not having any record of "Souls in Bondage" as being registered in October, 1940. This was due to an alleged literary theft ring diverting petitioner's mail for (33) years. Until October 28th, 1973, the author petitioner was not informed of his serial numbered copyright for his original "Souls in Bondage" (until after it would have expired.) Fortunately the petitioner submitted in 1959 a pocketbook edition in a retitled new version as "The

Russian." A new copyright was issued on this due to a statement from the aforementioned letter of October 24th, 1973, which reveals author petitioner's entire mail from U.S. Copyright Office had been left undelivered, having been placed in an obscure miscellany file (allegedly hidden by a literary theft ring infiltrating the copyright office.)

William H. Benson claims infringement in the degree of (piracy pro tanto.) Discovery of the alleged infringement occurred on 5/26/73 when petitioner observed a purported to be: a medical drama ("Dr. Zhivago") at Beverly Theatre in Beverly Hills, California. Petitioner filed his action in U.S.D.C. #I under 74-2291, August 8, 1974. Summary judgement was entered for M.G.M., Inc. March 18, 1975. Author William H. Benson motioned for appeal of judgement on July 7, 1975, pointing out U.S.D.C. #I's failure to observe similarities. U.S.C.A. entered judgement for M.G.M., Inc. May 11, 1976 stating: "Not timely renewed copyright and missing portions on the record of appeal." Petitioner, William H. Benson, motioned to augment the records on the appeal May 20th, 1976 with his two additional books. U.S.C.A. Court Order filed June 7, 1976 denied a rehearing and the augmenting of the record on appeal. This Court Order filed 6/7/76 in which the documents proving the infringement were filed "most favorably" toward the appellant. Petitioner prayed for a writ of certiorari August 22, 1976.

REASONS FOR GRANTING THE WRIT

A. The respondent, Metro-Goldwyn-Mayer Inc., admits access to petitioner's work "The Russian" as verified at P. 5 of their brief to The United States Court of Appeals for the Ninth Circuit, dated November 24th, 1975.

B. The Ninth Circuit Court Of Appeals filed documents virtually proving the infringement on June 7th, 1976, as

"most favorably toward the appellant." The documents above were titled "Motion to augment the record on appeal with appellant's two additional books." And a "Petition for a rehearing." Which documents were dated May 20th, 1976, and contained the "Pattern Test, and Value Judgement" as the immutable principle in determining infringement, as suggested by the masters on law of copyright, Justice Story, Professor Zachariah Chaffee and the eminent Professor Nimmer.

C. The same filed June 7th, 1976, Court Order contained a denial to augment the record on appeal due to appellant's failure to timely renew his Copyright on "Souls In Bondage." Which was retitled "The Russian," in May 7th, 1959, as proven by documents herein. Proven herein also is the documents to prove the petitioner's works are properly copyrighted. As verified in CT P6. And a United States Copyright Office letter dated October 26th, 1973. And by another letter from that office dated October 24th, 1973, verifying that petitioner's original work "Souls In Bondage" October 16th, 1940, had been lost for (33) years. At P. 4 and 6 Appendix.

The petitioner author, William H. Benson has submitted irrefutable proof that the "Missing Portions of the Record on Appeal are totally irrelevant and immaterial. It appears the respondent has submitted them for purposes of delay. In submitting such meaningless affidavits the guilty party is in violation of U.S.C.A. F.R.C.P. 56 g 28. Are further in violation under 56 e 28 failing to submit a certificate of U.S. Copyright. Respondent is in possession of an admittedly smuggled work, "Dr. Zhivago" admitted in the respondent's own souvenir program. The respondent was proven to be with unclean hands by consorting with smugglers and plagiarists! By documented evidence. Even the name "Boris Pasternak" is proven to be a copier-plagiarist as verified by

the Louis P. Petrich affidavit filed 2-7-75. Proven by excerpt page 790, Vol. II of the 1974 Encyclopedia Britannica. And a writer employed by respondent who uses four different aliases. And states "all his stories are based on stolen ideas." His "Andromeda Strain" is in a sense a re-do of H.G. Wells "War of the Worlds," verified by documents at P. 40-44 of Appellant's brief to the Ninth Circuit Court of Appeals. Dated January 28th, 1976. The respondent is further in violation of F.R.C.P. 56 g 28 in their submitting a false partial synopsis to the Federal Courts. In which there are stated two flagitious untruths which allegedly guided U.S.D.C. #I in its adjudication of March 3rd, 1975, to believe the friend of family character was "treacherous" which he is not. Viroff performs in interrelated dramatics as his counterpart, friend of the family, Kamarovsky, in Dr. Zhivago. The official court transcript on p. 8 L. 17 has this quote of the Hon. Judge E. Avery Crary. The flagitious untruths are illustrated in appellant's brief to United States Court of Appeals for the Ninth Circuit. Dated January 28th, 1976. Further reasons for granting the writ of certiorari, are: The United States Court of Appeals Court Order filed June 7th, 1976, contained the denial of augmenting the record on appeal with namely; appellant's two books. And a denial of "Petition for a rehearing." The two documents filed, contained a most comprehensive proof of the infringement. As measured by the immutable principle of determining infringement "The Pattern test - Value judgement" put forth by Professor Zachariah Chaffee, Professor Nimmer, and Justice Story, the masters on law of copyright infringement. This proof of the infringement was "Filed most favorably toward the appellant." Access has been proven as early as October 1940, by the respondent. Access has been admitted as of December 2nd, 1962. But access need not even be proven in this case, inasmuch as respondent has been proven with unclean hands. Proven to have consort with

smugglers of literature and admitted and proven plagiarists.

CITATIONS

Holding as American Code Co., vs. Bensinger, which reads:

C.C.A.N.Y. 1922. The American publisher of a piratical production of a work copyrighted in a foreign country cannot secure the fruits of his piracy by taking out an American Copyright.

American Code Co. v. Bensinger, 282, F. 520.

Holding as Stodart v. Mutual Film Corporation, 249 F. 507, affirmed 294 F. 513, 161 C.C.A.

"Where defendant copied plaintiff's play in its entirety, for use on screen, it cannot defeat suit for infringement of copyright on the grounds that earlier novel contained similar incidents."

Stodart v. Mutual Film Corp., 249 F. 507, affirmed 249 F. 513, 161 C.C.A. 439.

Holding as Universal Pictures uv. Harold Lloyd Corp., 162 F.26, 354.

Entire motion picture photoplay need not be copied to constitute infringement of copyright but the mere copying of a major sequence is sufficient. Copyright Act, Section 17 U.S.C.A. Section 1, Universal Pictures Co. vs. Harold Lloyd Corp., 162 F. 26, 354.

Holding as Cain v. Universal Pictures Co., 47 Supp. 1013.

U.S.D.C. 1943. In determining "copyright infringement," where access is admitted, probability that similarities are the result of copying, intentional or unintentional, is high because access being admitted there may be, despite the best of intentions, unconscious and unintentional copying amounting to "infringement," but access alone is insufficient.

Copyright Act Section 1 et seq., 17 U.S.C.A. Section 1 et

seq. Cain Universal Pictures Co. 47 F. Supp. 1013.

MISSING PORTIONS OF THE RECORD ON APPEAL

The Louis P. Petrich affidavit as vital to being augmented on the record on appeal is herein proven irrelevant except as to its strengthening the author petitioner's case. The above affidavit was filed 2/7/75 and contains a purported to be a "U.S. Copyright Office Facts of Registration." of a pamphlet titled "Souls In Bondage" by the petitioner William Harris Benson, dated October 16th, 1940. for 28 years. AA 10-095. This description "pamphlet" is an attempt to berate-belittle the petitioner, inasmuch as the original certificate of U.S. Copyright delivered to the petitioner (33) years late. Verified by letter in appendix at P. 4. The original certificate states (2) books. Therefore this "Facts of Registration" is spurious, or in total error. The document is also incomplete and further in error in that it fails to state that Petitioner's "Souls In Bondage" was retitled. as "The Russian." In 1959: May 7th, 1959, a new copyright AA 397205 was issued to author Petitioner. This was due to U.S. Copyright Office not finding a record of "Souls In Bondage" submitted in October, 16, 1940. Therefore the contract upon "The Russian" states: it protects for 28 years or until 5/7/87. Respondent admits access to "The Russian" and the petitioner proved the access to, "Souls In Bondage" as of October, 1940. The "Facts of Registration" is further rendered null! Voided! By a United States District Court ruling of March 3rd, 1975. This ruling is contained in official court transcript at P. 6. In which the Hon. Judge E. Avery Crary, ruled after several months examining, that the petitioner's works were properly copyrighted. The "Facts of Registration" above is dated, January 28, 1975. It is superseded by this March 3rd, 1975 ruling. The "Facts of

"Registration" is further rendered null! Voided! By a letter from United States Copyright Office to the petitioner dated October 26th, 1973. Which letter attached hereto at P. 6 in appendix, verifies that petitioner's works are still in U.S. Copyright archives depository. Protected! The Louis P. Petrich affidavit is again most damaging to the respondent's defense inasmuch as it also contains an excerpt P. 790 of Vol. II of the Encyclopedia Britannica of the year, 1974. This excerpt page 790, reveals a name "Boris Pasternak" the name of a poet who retired in 1933. As verified by the preface page of the book "Doctor Zhivago." This name is from all indications the pseudonym of a ghost writer as it states that "Boris Pasternak" translated-copied Goethe's literature. Shakespeare's and many other writers. Therefore a name "Boris Pasternak" was a copier and a plagiarist. There is another writer employed by the respondent Metro-Goldwyn-Mayer Inc. This writer is described on pages 40-44 in appellant's January brief to the Court of Appeals for the Ninth Circuit. He uses four different names. A page or pages from Time Magazine of 1972, and Harper's Bazaar, 1972, contain a reporter's interview of the above writer. quoted in the magazine. "All of his stories are based on stolen ideas." His "Andromeda Strain" is in a sense a re-do of H.G. Wells' "War of the Worlds." Therefore since this writer is employed by respondent and wrote and directed "Westworld" in 1973-74 release, it appears the respondent is with unclean hands by consorting knowingly with smugglers and plagiarists — (Having admitted the "Doctor Zhivago") literature was smuggled. Therefore the Louis P. Petrich affidavit is null and void and its "Facts of Registration" dated January 28, 1975 is superseded by the March 3, 1975 U.S.D.C. ruling which rules petitioner's works are properly copyrighted.

The Karla Davidson affidavit, as a missing portion on the

record on appeal is contradictory. Contradicted by Metro-Goldwyn-Mayer, Inc.'s own "Dr. Zhivago" which conflicts with the Karla Davidson affidavit. The Karla Davidson affidavit states a person or party by the name of S.A. Sostar, produced "Doctor Zhivago." While the "Doctor Zhivago" film and its screen adaptation, states: "Carlos Ponti" produced it. We now have learned that we cannot believe a name, ("Boris Pasternak") on a book having any credence: or the producer's name on a film. And the writer aforementioned who states; "all his stories as based on stolen ideas" uses four different names. Therefore, the affidavit of Karla Davidson as a vital missing portion of the "Record on Appeal" is totally irrelevant, and contradictory. It is of no benefit to be on the record on appeal. It is beneficial toward the petitioner only. It is time consuming to the court and petitioner. However, the Karla Davidson affidavit is beneficial in one respect. By stating the positive date of infringement as the years 1963-1966. This statement affidavit proves that petitioner's work was infringed during the unquestioned period of copyright protection. Which is before 1968 of the petitioner's original "Souls In Bondage" AA 10095 October 16th, 1940 expiration date. This was retitled "The Russian" in May 7th, 1959. A new U.S. copyright was issued AA397 205 for 28 years. And the affiant, Karla Davidson verifies the positive unquestioned date of infringement was during petitioner's protection period.

The third affidavit stated to be vital as being a missing portion of the record on appeal is the Milford I. Rydell affidavit. The Affiant stated he was familiar with the continuity of the film "Doctor Zhivago" and other facets as film cuts, etc. Yet when the above film was exhibited February 24th, 1975 not one voice of protest was heard nor a denial was made when the petitioner discovered and pointed .

out a major dubout of a most important dialogue and scene sequence which identified the scene as identical in both stories. The petitioner informed the court and all present the pages 330-347 of book "Dr. Zhivago" proving the dubout. Not one of the defense teams present made even one denial when the multitude of similarities were illustrated verbally by the petitioner. The affidavit, described as the "Milford I. Rydell" affidavit appears to be irrelevant and immaterial. All three affidavits are irrelevant and immaterial and appear to have been submitted for purposes of bulking up a totally weak defense. Neither the Milford I. Rydell, Karla Davidson, or Louis P. Petrich affidavit are vital to be classed as important to be on the record on appeal. The Louis Petrich affidavit's "Facts of Registration" is totally in error. The affidavit's "Facts of Registration" is totally in error. The affidavit states "Souls In Bondage" by this author petitioner "not timely renewed." Failing to state it was retitled as "The Russian" in May 7th, 1959 AA 397205. And this retitle was for 28 years or until 1987. A new U.S. Copyright was issued due to the U.S. Copyright Office being unable to find facts of registration of "Souls In Bondage" 10-16-1940 (in 1959). This is not the fault of the petitioner. A record of it was not to be found in 1958-1959, or in 1967-1968 when the petitioner corresponded with that office as verified by the returned copyright application photocopy. Now the U.S. Copyright Office professes to know of it. (35 years later. P. 3 Appendix)

Petitioner's U.S. Copyrights photocopied and submitted to the court verifies petitioner corresponded with U.S. Copyright Office. When the author petitioner submitted his retitled work as "The Russian" he submitted a form, (A) application with the name of "Souls In Bondage," its original title. This application read as "Souls In Bondage" October, 1940. "The Russian" retitled. Copyright Office

never issued a serial numbered Copyright on petitioner's 1940 original until 1973 (33) years late, and the "Facts of Registration" fails to note this in its purported knowledge of "Souls In Bondage's" 35 year history. The 1958 application was returned with written instructions to do not write "Souls In Bondage" of October 1940, but to write only "The Russian." The petitioner complied and later a new copyright was issued to the author petitioner. (AA 397205 "The Russian" May 7th 1959.) This same procedure was repeated in 1967-1968 when petitioner inquired of the copyright office concerning his book dramatization and mentioned his work "Souls In Bondage" of October 1940, and its retile "The Russian" May 7th, 1959. Submitting along with it a form R renewal for purposes of making sure he was protected. The form D Book Dramatization was returned with instructions to "Do not write "Souls In Bondage" October 1940. "The Russian" 5-7-59. But to write only "The Russian" May 7th, 1959. And a sticker upon this returned application stated "Submit a new application" which the petitioner did. Subsequently petitioner was issued a dated May 8th, 1968, U.S. Copyright. (DU 71514.) The (R) form application was not returned. In the appendix at P. 3 is a photocopy of petitioner's returned copyright of 1968, which reveals the U.S. Copyright Office is totally in error under U.S.C. Title 17 Section 7, circular 14, which reads; in synopsis form.

"It is advisable to include the year date of publication of the old material."

Therefore the U.S. Copyright Office erred and instructed the petitioner wrongly. It is also clear that office was in error in 1968 by not sealing and returning petitioner's Form R application (notwithstanding he was protected by the May 7th, 1959, certificate AA 397205, until May 7th, 1984.) In error two times (The U.S. Copyright Office is in violation of Title 17, U.S.C. Section 7, circular 14.) The petitioner was

instructed by the copyright office in every instant. Common sense would have told any individuals in the copyright office that an author is approaching them only in the interest of protecting his work. An equitable judiciary such as a court of equity, certainly would not quibble over a simple question as this. And if the U.S. Copyright Office was liberal and honestly did wish to help its applicants (the office would not fight a writer) who has properly submitted a work of literature for protection. A court of equity would in every instant say: "The petitioner author William H. Benson, certainly had a great and reverent story. His U.S. Copyright Office mail was diverted for 33 years. His Manufacturing Bookbinder's was destroyed in the month, week, year when he renewed his U.S. Copyright (May 2nd, 1968) (Book dramatization dated May 8th, 1968 (DU 71514) allegedly by the literary theft ring to destroy his proof of prior authorship to the "Dr. Zhivago" prize winning story. In spite of these abortive acts the United States District Court #1 did rule March 3, 1975, that petitioner's works are properly copyrighted. The U.S. Copyright Office's "Facts of Registration" contained in the Louis P. Petrich affidavit "As not timely renewal of petitioner's original "Souls In Bondage" October 16th, 1940, is dated January 28th, 1975. It is rendered superseded! By the March 3rd, 1975 District Court Ruling. And earlier was proven to be erroneous and incomplete in this petition for a writ of certiorari. Also it was earlier contradicted by the U.S. Copyright Office Letter dated October 26th, 1973, hereto photocopied in appendix at P. 6, which in itself alone is sufficient evidence to illustrate that the "Facts of Registration" by U.S. Copyright Office (is) contradicted by U.S. Copyright Office. This office is also in violation of Title 17 Section 7 of the United States Code, Circular 14, as proven hereto in earlier pages. Equitable evidence all in favor of the petitioner. Notwithstanding this positive proof aforementioned, one salient fact

hovers immaculate in the offing, as a guardian angel of inspired authors: In one year (1978) U.S. Copyright protects for 50 years. The author is not beseeching the United States Supreme Court for any unreasonable act. Merely to honor the United States District Court's March 3rd, 1975 ruling of petitioner's properly copyrighted work. And the United States Copyright office's own letter dated October 26th, 1973, which proves his book is still in the depository protected. A photocopy of that letter is hereto attached in appendix at P. 6.

Returning to the First Amended Complaint, Filed 10-8-74. The change of the 3 co-defendant names to be one, Metro-Goldwyn-Mayer, Inc. is due to evidence petitioner found that proved the respondent as having access to petitioner's book "Souls In Bondage" in 1940, through a stellar director, W.S. Van Dyke, who is proved to be a nephew of The Vice President Eddie Mannix, of Metro-Goldwyn-Mayer, Inc., and was employed there! Staffed and officed there during October 1940-1942. Mr. Van Dyke deceased Feb. 9th, 1943. Proof of the statements are in the Robert C. Cannum's Biography of "W.S. Van Dyke" and the Mythical City of Hollywood. Proof of access by the respondent as early as 1940, is on page 20 of Appellant's brief of January 28th, 1976, to the United States Court of Appeals, Ninth Circuit. Therefore the first amended complaint as being a missing portion of records on appeal is proven to be irrelevant and immaterial. And especially when holding as "Stodart v. Mutual Film Corporation, 249 F. 507, affirmed 249 F. 513, 161 C.C.A. 439.

"Where defendant copied plaintiff's play, in its entirety for use on screen, it cannot defeat suit for infringement of copyright on the grounds that earlier novel contained similar incidents."

Therefore all of the missing portions of the record on

appeal are proven to be fatal to the respondent's defense. And most beneficial to petitioner's case.

The petitioner's Motion for Augmenting the Record on Appeal with his additional two books dated May 20th, 1976 contained a comprehensive memorandum of sequence of events of petitioner's three books described side by side with "Dr. Zhivago" the screen adaptation (major sequence reel 8, P. 12 to the ending reel 12, P. 3-6) and is titled ("Pattern Test-Value Judgement), which proves the infringement: it has the page number of petitioner's all three books placed beside "Dr. Zhivago's" total similarity. And it is contained on P. 25-51 of petitioner's brief to the United States Court of Appeals for the Ninth Circuit dated May 20th, 1976. Access is proven as of October 1940. Access is admitted as of December 2, 1962. However, in this case of plagiarism and infringement access need not be proven inasmuch as "Dr. Zhivago" has been admittedly smuggled as stated in the respondent's own souvenir program and the modus operandi of respondent's consorting with smugglers of literature is proven with documents submitted to the courts. The petitioner therefore requests "The United States Supreme Court to consider this "Immutable Principle" of determining infringement in the degree of "piracy pro-tanto" as suggested by the masters on copyright: The eminent Professor Nimmer, Professor Zachariah Chaffee, and Justice Story. This document described above as "The Pattern Test-Value Judgement" was dated May 20th, 1976, and filed "most favorably toward the appellant" as verified in the Court Order of the United States Court of Appeals filed June 7th, 1976. A photocopy of same hereto attached in appendix at P. 7.

The final item stated to be a missing portion of the record on appeal was stated to be "The Dr. Zhivago" film. It's encumbent upon the respondent to submit this. However in

lieu of the above film the petitioner himself submitted the "Dr. Zhivago" film play (adaptation). This contained (the major sequence reel 8 P.12 to the ending reel 12 P. 3-6) being the subject of the infringement.

If the film "Dr. Zhivago" were placed on the record on appeal it would defeat the respondent's allegations again. The above film was exhibited in The District Court, February 24th, 1975. At which time the petitioner pointed out a most vital dubout. The petitioner immediately referred to P. 330-347 proving the dubout to all present in the court room. No voice of denial was heard when the dubout was proven and when the many other similarities of the identical characters (4) and the sequence of events were proven identical. None of the respondent's defense team raised a voice denying the infringement claim in the degree of piracy pro-tanto.

Therefore the missing portions of the Record on Appeal were: (A) "The Dr. Zhivago Film" or its film adaptation. (This film adaptation was submitted to the court in January 28, 1976.) (B) The petitioner's first amended complaint filed 10/8/74, (proven irrelevant herein.) (C) The three affidavits of Karla Davidson, Milford I. Rydell, Louis P. Petrich. (All proven irrelevant except as to strengthening petitioner's case. And proving injurious or incriminating to the respondent's defense.) (D) The petitioner's two books. (If these are permitted to be augmented to the Record on Appeal they will prove to be identical to petitioner's original work "Souls In Bondage.") Inasmuch as all contain the dynamic suspense situation.

Petitioner's first amended complaint contained three co-defendants. Pantheon Books, Inc., 250 - 51st Street, New York, New York, M.G.M., Inc., and their Mr. Doran's office manuscript rejectress-supervisor (formerly a co-de-

fendant.) The petitioner knows the manuscript supervisor only as a lady he saw at close range — 10 feet away in 1936 — in agent George Bentel's office in Hollywood, and also in 1940-1941 at the same office.

Next he conversed with her in 1961 at M.C.A. at which time she stated: "That the petitioner could leave "The Russian" at M.C.A., the largest literary agents, but petitioner-author William H. Benson would have to sign a paper stating "it was no longer his property." Author William H. Benson refused and Benson exited but was followed by a film person who appeared to be taking his license number. Two weeks later a news item appeared stating "It is thought the new ending for the "Mutiny on the Bounty" film remake would be a fire scene." (When the film was released, it indeed had the fire scene of a man running aflame in a room. An M.G.M., Inc. film.) It is alleged here the idea was taken from petitioner's drama "The Russian" when partially read in 1961. This lawbreaker being pursued and shot at — then catching fire — running aflame was used in this respondent's "Across 120th St." In 1962 MCA was, allegedly no longer permitted to be literary agents by government, but in 1962 petitioner William H. Benson was asked to bring "The Russian" to M.G.M., Inc., this respondent. Later, the studio rejected "The Russian" and securely officed at M.G.M., Inc., after MCA was denied the right to be literary agents was Mr. Doran's manuscript supervisor of December 2, 1962. On which date she rejected "The Russian."

B. The respondent also refused to let the U.S. marshal serve her a summons at M.G.M., Inc., in this case and also refused to give the U.S. marshal her home address to which actions the U.S. marshal reported: M.G.M., Inc., refused to cooperate. (As verified on the returned summons.)

C. Pantheon Books, the other co-defendant, also turned

the U.S. marshal away, refusing his summons in this case.

D. Notwithstanding these legal rebuffs the petitioner obtained the Robert C. Cannum biography of W.S. Van Dyke and the mythical city of Hollywood in which pages 305-312 reveal W.S. Van Dyke whose rejection letter of October 1940 verifies M.G.M., Inc. had access to petitioner's before Pantheon Books, Inc. and reveals that W.S. Van Dyke was the nephew of Vice President, Eddie Mannix of M.G.M., Inc., and also was a writer-director-producer. Pages 305-312, 398-411-415-417-418 reveal Van Dyke was also staffed-officed at respondent M.G.M., Inc. in 1940-1942-1943. Therefore, the First Amended Complaint's defendants names were eliminated to be one (M.G.M., Inc.).

Therefore, the allegation of missing portions of the record on appeal is a frivolous allegation as regards the first amended complaint filed 10/8/74.

CONCLUSION

For all of the many foregoing reasons stated, the United States Supreme Court should concur with the United States Court of Appeals For The Ninth Circuit in filing the documents proving infringement "most favorably towards the appellant." And grant the writ of certiorari to review the judgement of the Ninth Circuit. And review petitioner's proof of timely renewed copyright. And observe the total irrelevance of all the stated "Missing portions of the record on appeal." Which missing portions are of paramount benefit to the petitioner's case. And most injurious to the respondent's. And reverse the judgement of the United States Court of Appeals for the Ninth Circuit.

The petitioner, William H. Benson, prays the United States Supreme Court for twenty million dollars actual damages, and ten million dollars punitive damages to his

career as a top writer. Which amounts are not unreasonable nor even commensurate with the overwhelming box office success of the infringing "Doctor Zhivago," titled film. Which film has reputedly grossed a Billion dollars (conservatively) over the years (worldwide.) When based upon the net profit of a successful business venture as being a (conservative 10%-25% in such successful ventures). But spiral upwards to 60%. The very minimum would be \$100,000,000 to the 25% producer's share which figures \$250,000,000. (This being also a conservative figure.) This seems to be a very fair amount in lucid view of the fact the petitioner has been rendered poverty stricken. And was deprived of the privilege of assisting financially his God fearing Christian mother driven to poverty. Also breaking her heart in a belief her son, Author petitioner, William H. Benson, was a total failure because of this exclusion of favour by the film industry. A poverty that prevented the petitioner from properly educating his three children or properly endowing them financially to combat the travail and vicissitudes of this life. Therefore the petitioner informs the United States Supreme Court that the record payment of a film vehicle is \$1,000,000. and the book rights record reputedly \$600,000. And the above film record price is not a film that grossed as strongly as the "Doctor Zhivago" infringing film has. Having been stated to be among the top three money grossers of all time of all films. This petitioner's infringed story caused millions of tax dollars to be funneled into the United States Treasury due to the success of his pirated suspense story used in the above film. Therefore the judgement of the United States Court Of Appeals Of The Ninth Circuit should be reviewed by granting the Petitioner a writ of certiorari in this case for plagiarism and infringement in the degree Piracy Pro-tanto. And reverse the judgement of the United States Court of Appeals for the Ninth Circuit, entirely in favor of the author petitioner in lieu of the above court's

June 7, 1976, court order "Filing the Documents" containing the Pattern Test-Value Judgment as the "Immutable Principle" of determining infringement. "Filed most favorably toward the appellant."

The petitioner's works are proven properly copyrighted. [CTP6] Assuming arguendo otherwise: Nothing! Absolutely Nothing! Would obviate the fact that his works were infringed during the unquestioned period of Copyright Protection. The petitioner was not given screen recognition or literary acclaim. And this is "Fraud" in point of law. And all profits of the business venture "Film Dr. Zhivago" would revert to the petitioner.

Of Counsel:

YOUNGMAN, HUNGATE,
LEOPOLD, PETRICH,
DE LA FLORS.
1801 Century Park East
Suite 1101
Los Angeles, California 90067

WILLIAM H. BENSON
448 S. Occidental Blvd.
Los Angeles, California 90057

Petitioner
In Propria Personna

CERTIFICATE OF SERVICE

It is hereby certified that service of this petition for a writ of certiorari to review the judgement of The United States Court Of Appeals For The Ninth Circuit, San Francisco, California, was made on opposing counsel by mailing three copies properly addressed to him as follows:

Metro-Goldwyn-Mayer, Inc.,
10202 West Washington Blvd.,
Culver, City, California.

Youngman, Hungate, Leopold,
Petricich, De La Flors,
1801 Century Park East,
Suite 1101,
Los Angeles, California 90067

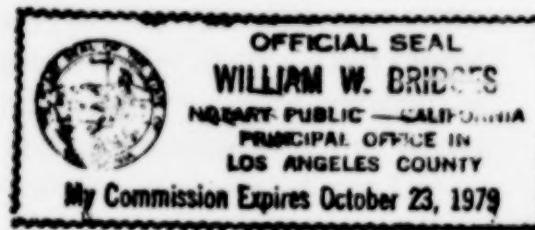
Dated August 22nd, 1976.
November 27th, 1976.

William H. Benson

William H. Benson
Petitioner in Propria Personna.

Subscribed and sworn to
before me this 3rd, day of
December, 1976.

William H. Benson
Notary Public



APPENDIX

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

WILLIAM H. BENSON,	<i>Appellant,</i>	}
vs.	METRO-GOLDWYN-MAYER, INC., et al., <i>Appellees.</i>	

No. 75-2754
MEMORANDUM

[May 10, 1976]

An Appeal from the United States District Court
for the Central District of California

Before: BARNES, ELY and CHOY, Circuit Judges.

William Benson brought this action for infringement of copyrights on his books "Souls in Bondage" and "The Russian". The district court found for Metro-Goldwyn-Mayer, Inc. after reviewing the books and reviewing the film "Dr. Zhivago", the alleged infringing work.¹

Benson appealed² but failed to designate material parts of the record for this Court's review, namely the books themselves.

Appellant Benson fails to recall or recognize that on June 10, 1975, almost a month before any notice of appeal was filed, he had withdrawn from the Clerk's files three "exhibits to [his]

¹See Findings and Conclusions, C.T., pp. 7-10; and Summary Judgment, C.T., pp. 11 and 12.

²This appeal was "from the judgment entered in this case on March 13, 1975." (C.T., p. 13) No judgment was entered in the district court on March 13, 1975. The Findings of Fact and Conclusions of Law and Judgment were dated March 15, 1975, and filed March 17, 1975, and the Judgment entered March 18, 1975.

William H. Benson vs. Metro-Goldwyn-Mayer, Inc., et al.

Amended Complaint", namely, one copy of book "Souls in Bondage", and one copy each of book and dramatization of book, "The Russian".³

Because of the withdrawal of this evidence by appellant and because the film of "Dr. Zhivago" (shown to the trial court for comparison with the three withdrawn exhibits), was never introduced in evidence, it was and is impossible that a record sufficient for this Court to pass lawfully upon the issues presented to it, can be placed before this, or any reviewing court.

Ordinarily, if any appellant fails to properly designate the portions of the record essential to an appeal, either the appellee, or this Court on its own motion, can obtain an order directing the District Court Clerk to augment the record on appeal. Such a remedy is here impossible.

Accordingly, we have no choice but to dismiss the appeal. Rule 11(a) Fed. R. App. Proc. clearly places the burden of designating an adequate record on the appellant. *See also, L & E Co. v. U.S.A. ex rel. Kaiser Gypsum*, 351 F.2d 880 (9th Cir. 1965).

Dismissed.

³We hereby authorize and order that the record on appeal be augmented by a certified photostat copy of the receipt issued by the Clerk of the District Court of the Central District of California, in case No. CV. 74-2291-EC, dated and filed June 10, 1975, and signed by appellant Benson.

**Application for Registration of a Claim to Copyright
in a dramatic or dramatic-musical composition**

Instructions: Make sure that all applicable spaces have been completed before you submit the form. The application should be **mailed** as form 9. For publication made by the applicant should not be submitted until after the date of publication given in line 4 (a), and should state the facts which extend the date given in line 4 (a). See instructions on page 2.

Pages 1 and 2 should be reprinted or printed with new ink. Pages 3 and 4 should contain exactly the same information as pages 1 and 2, but may be carbon copies.

1. **Copyright Claimant and Assignee:** Give the name(s) and address(es) of the claimant(s) and assignee(s) to be named as the copyright owner(s).

— William Harris Benson
13408 S. Vermont Ave., Gardena, Calif.

2. **Title:** **The Russian**

3. **Date of First Publication:** Give the date of first publication of the work.

— October, 1960 Titled **Souls in Bondage**

4. **Place of First Publication:** Give the name of the country in which the particular copies of the work were first published.

— United States

5. **Previous Registration or Publication:** If a claim is made for copyright in any substantial part of this work, give previous registration or publication in the U.S. Copyright Office or equivalent office.

— We have previously registered. Yes. No Date of registration — Oct. 7, 1959 Registration number A-297800

— We have previously published. Yes. No Date of publication —

— Is there any substantial new MATTER in this version? Yes. No If your answer is "Yes" give a brief general statement of the nature of the new MATTER in the version. (This matter may consist of substance, development, refinement, and the like as well as substantial new or unusual material.)

— Dramatization of book.

Complete all applicable spaces on next page

FORM 9
CLASS REGISTRATION NO.
D ORIGINATOR NUMBER
OR DATE RECEIVED BY
U.S. COPYRIGHT OFFICE

IMPORTANT:

This application is returned for
your information only.

Please resubmit it.

Submit a New Application

Copyright Office
Washington, D.C. 20550
C-100-1000-1000

3A

Court transcript of March 5, 1975-Page 6

1 To prove latent intent it is necessary for the plaintiff
 2 to show first that the defendant had access to the plaintiff's
 3 work, and 2, a substantial similarity between the plaintiff's
 4 work and the defendant's.

5 Now, I assume for the purposes of this ruling that the
 6 defendant did have access to Mr. Benson's work, which, of
 7 course, his work was properly copyrighted.

8 So the issue as I see it is whether there is a substantial
 9 similarity between the plaintiff's book and script and the
 10 defendant MGM's motion picture and whether that substantial
 11 similarity is a matter of law.

12 The author of the book of Doctor Zhivago is not named
 13 as a party and I believe Mr. Pasternack is deceased at this
 14 time.

15 Generally speaking, copyright does not protect an idea
 16 in and of itself. It doesn't protect the idea, but it protects
 17 the expression of the idea. Comparing the plot -- or the plot
 18 is sometimes referred to as the sequence of events. They're almost
 19 interchangeable. The plot or sequence of events in the work
 20 here involved, we have to look to see if there are material
 21 variations in determining the sequence of events. Are there
 22 material variations in these sequence of events. As I say, the
 23 sequence of events is sometimes referred to as the plot. That
 24 is, are the manners of the basic themes or ideas different.
 25 The basic themes or ideas, are they different.



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WASHINGTON D.C. 20540

SU 2-1573

Mr. William H. Benson
448 South Occidental Blvd.
Los Angeles, California 90057

Re: Your letter received September 19, 1973

Dear Mr. Benson:

A review of our correspondence files relating to the work entitled SOULS IN BURGAGE discloses four (4) Copyright Office letters and the original certificate of registration (AA 10095), which were sent to you but returned to us for various reasons as undeliverable. We are forwarding this material herewith, which should be self explanatory.

If we may be of any further assistance, please refer to our ROUTINE INFORMATION FILE (B) and the date of this letter when you reply.

Sincerely yours,

Molly P. O'Brien
(Mrs.) Molly P. O'Brien
Chief, Service Division

Enclosures:
Original Certificate AA 10095 (1940)
C.R. Letters of Sept. 20, 1941, Oct. 1, 1941, July 31, 1941
and April 12, 1946
Circular 14

ROUTINE INFORMATION FILE (B)

BEST COPY AVAILABLE

Before: BARNES, ELAY and CHOY, Circuit Judges.

William Benson brought this action for infringement of copyrights on his books "Souls in Bondage" and "The Russian". The district court found for Metro Goldwyn-Mayer, Inc. after reviewing the books and reviewing the film "Dr. Zhivago", the alleged infringing work.¹

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Because of the withdrawal of this evidence by appellant and because the film of "Dr. Zhivago" (shown to the trial court for comparison with the three withdrawn exhibits), was never introduced in evidence, it was and is impossible that a record sufficient for this Court to pass lawfully upon the issues presented to it, can be placed before this, or any reviewing court.

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WASHINGTON, D.C. 20590

William H. Benson
443 South Occidental Blvd.
Los Angeles, California 90057

Re: Your letter of October 22, 1973

Dear Mr. Benson:

A check of our deposit copies revealed that the copy submitted in 1959 and registered under number A - 397205 is a pocket size book which measures 4 inches by 6 inches.

Since we have no record of the larger copy measuring 8½ inches by 11 inches being registered, we are returning your \$5.00 check received with your letter.

We are enclosing a copy of our letter dated November 24, 1973 which is in reply to yours of September 19, 1973 concerning your question about your 1950 work entitled SOULS IN BONDAGE.

Should further correspondence be necessary, please refer to our U. S. File (B) and the date of this letter.

Sincerely yours,

Cecily P. Osteen
(Mrs.) Cecily P. Osteen
Chief, Service Division

Enclosure
Copy of Copyright Office letter dated Nov. 24, 1973

FILED

JUN 7 1976

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EMIL E. MELI, JR.
CLERK, US COURT OF APPEALS

WILLIAM H. BENSON,
Appellant,
v.
METRO-GOLDWYN-MAYER, INC.,
et al.,
Appellees.

No. 75-2754
O R D E R

Before: PARKS, GLY and CHOY, Circuit Judges.

The appellant has filed two documents, entitled (1) "Notice of Appeal and Petition for Rehearing," and (2) "Petition for Rehearing on Appeal (for reversal of summary judgment), and Augmented Record on Appeal to include Appellant's Two Books."

There can be no appeal from a decision of the Court of Appeals to the same Court. That purported appeal is denied.

The proposed augmentation of the record would in no way solve the absence of other material evidence missing from the record on appeal, nor would it cure the failure of appellant to renew his 1940 copyright.

Considering the two documents filed most favorably toward appellant, we treat them as (1) A Motion to Augment. See

TO: CLERK NCA
RE: BENSON v. M-G-M, No. 75-2754
ALL JUDGES CONCERNED IN THE ORDER IN THE SUBJECT MATTER HAVING CONFERRED,
YOU WILL PLEASE FILE.

[Signature]
UNITED STATES CIRCUIT CLERK